101ST CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 101-54
Part 4

FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

REPORT

OF THE

COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

JUNE 1, 1989.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

98-463

WASHINGTON : 1989

H683-1

101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 101-54
Part 4

FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

JUNE 1, 1989.—Ordered to be printed

Mr. MOAKLEY, from the Committee on Rules, submitted the following

REPORT

[To accompany H.R. 1278]

The Committee on Rules, to whom was referred the bill (H.R. 1278) to reform, recapitalize, and consolidate the Federal deposit insurance system, to enhance the regulatory and enforcement powers of Federal financial institutions regulatory agencies, and for other purposes, having considered the same, report thereon without amendment and without recommendation.

SCOPE OF REPORT

In addition to its well understood responsibility for resolutions relating to the order of business, the Committee on Rules receives original referral of all bills and resolutions changing or affecting the rules of the House.

H.R. 1278, as introduced, contained no matter touching on the rules of the House. However, by subsequent committee action, two provisions within the jurisdiction of the Committee on Rules were inserted.

Section 501 of the amendment in the nature of a substitute, recommended by the Committee on Banking, Finance and Urban Affairs, proposes a new section 21A(u) of the Federal Home Loan Bank Act, which provides certain procedures for congressional review of personnel structures of the proposed Resolution Trust Corporation, and is a rule of the respective Houses.

In addition, the Committee on Ways and Means has proposed amendments affecting the budgetary treatment of the proposed Resolution Funding Corporation, partly within the jurisdiction of the Committee on Rules. The committee amendment proposes a section 502(c) of the bill, which affects both the format of the concurrent resolution on the budget, a matter wholly within the juris-

diction of the Committee on Rules, and calculations under the so-called Gramm-Rudman-Hollings law, a matter for which the committee shares jurisdiction with the Committee on Government Operations, which has also considered the matter.

The bill was referred on May 23, 1989 to the committee, sequentially, for a period ending May 25, 1989, which was extended until June 1, 1989, for consideration of those provisions of the amendments which fall within the jurisdiction of the committee under clause 1(q) of rule X. The committee construes the referral to be limited to those portions of the proposed committee amendments identified above. The committee asserts jurisdiction over those provisions touching on the rules and has confined its mark-up and reporting to that subject. Of course, the committee is obliged, in considering statutory rules, to investigate the broader legislative context in which those rules are proposed to operate.

However, in all particulars of the bill not touching on the rules, the committee defers to the reports by the appropriate committees.

BACKGROUND AND SUMMARY

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 is an extensive revision of the system for insuring and supervising the thrift industry. It also makes significant changes in other banking law.

The Committee on Rules notes that the major issues are presented in detail in the reports to accompany H.R. 1278 of the committees principally responsible for the measure.

The Committee on Rules, however, has examined two provisions of the bill:

Legislative Veto of Personnel Structures of RTC

Section 501 of the amendment in the nature of a substitute, recommended by the Committee on Banking, Finance and Urban Affairs, proposes a new section 21A(u) of the Federal Home Loan Bank Act, which provides certain procedures for congressional review of personnel structures of the proposed Resolution Trust Corporation, and is a rule of the respective Houses.

At its peak the RTC will be one of the largest financial institutions on earth. It will control an extraordinarily large and complex inventory of assets, and be responsible for the conservation of vital taxpayer interest in those assets.

This role will have to be balanced against the fact that RTC will sometimes find itself owner of so vast an inventory that the opportunity exists, by mischance, to destroy the real estate market values of some localities and areas.

Likewise, prior experience with thrift liquidations indicates that many of the properties, while retained, will be far from passive holdings, often acquired at disadvantageous stages of development or occupancy.

The RTC will need to recruit personnel in very competitive environments, and that is part of the reason that the agency has been structured in a unique manner that leaves it "half in and half out" of the Federal Government.

Congress has been sympathetic to the Administration's request. However, great dissatisfaction lingers from experience with similar structures, particularly the Synfuels Corporation and the Federal Assets Disposition Association (FADA).

As a result, the Committee on Banking, Finance and Urban Affairs included provisions which prohibit RTC from implementing an employee compensation and benefit package until the plan is submitted to Congress, and Congress has had an opportunity to disapprove the plan by enactment of a joint resolution. The amendment provides that, for purposes of congressional rules, the joint resolution will be handled in a manner similar to that used in section 208 of the Defense Authorization Amendments and Base Closure and Realignment Act.

Gramm Rudman Hollings Revisions

The Committee on Ways and Means has proposed amendments affecting the budgetary treatment of the proposed Resolution Funding Corporation, partly within the jurisdiction of the Committee on Rules. The committee amendment proposes a section 502(c) of the bill, which affects both the format of the concurrent resolution on the budget and calculations under the Gramm-Rudman-Hollings law.

The Ways and Means Committee asserts that Treasury borrowing has consistently been cheaper to the taxpayer than borrowing by agencies one step removed. The committee has therefore proposed an "on-budget" debt structure.

A necessary component of this approach, included in the committee amendment, is that the borrowing be reflected in each concurrent resolution on the budget. The amendment also provides that the amounts attributable to the borrowing will not be counted for purposes of determining whether the deficit targets are met under the Congressional Budget Act of 1974 as modified by the Balanced Budget and Emergency Deficit Control Act of 1985. The amount excluded from deficit calculations must be separately identified in the budget.

These provisions of law have to do with enforcement of the maximum deficit amounts specified by the statute. To the extent that these enforcements operate within Congress, they are an exercise of the rulemaking power of the respective Houses, and properly within the jurisdiction of the committee.

Persuasive arguments are made for both the "on-budget" and "off-budget" treatment. However, with the currently operative concurrent resolution on the budget balanced precariously against the Gramm-Rudman-Hollings limits, it is obvious that an adjustment must be made, if an on-budget statute is chosen.

ANALYSIS OF LEGISLATION

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 comprehensively amends banking law, particularly with respect to insurance of thrift institutions, to provide improved deposit insurance, supervision and enforcement powers.

FDIC

Title II amends the Federal Deposit Insurance Act to authorize the Federal Deposit Insurance Corporation (FDIC) to insure deposits held at savings associations as well as commercial banks, and makes structural and bank insurance law changes.

It also establishes the FSLIC Resolution Fund (Fund), and transfers to such Fund the reserves and assets, debts, obligations, contracts, and other liabilities of the FSLIC existing on the date of the dissolution of the FSLIC.

It increases the borrowing authority of the FDIC, and makes significant enhancements in the agency's regulatory and supervisory authorities.

Thrift Supervision and Restructuring

Title III establishes an Office of Thrifts Supervision, substantially analogous of the Comptroller of the Currency, to perform most of the duties and responsibilities of the abolished Federal Home Loan Bank Board, and many of the former duties and responsibilities of the restructured Home Loan Banks, with respect to the examination, supervision, and regulation of savings institutions.

The title also makes significant changes in law intended to strengthen the safety and soundness of the industry.

Title IV terminates the Federal Savings and Loan Insurance Corporation and transfers functions to the FDIC or the Resolution Trust Corporation.

Financing

Title V establishes a complex set of entities to raise funds through borrowing authority and to administer restructurings of thrift.

Subtitle A establishes the Resolution Trust Corporation (RTC), whose functions are: (1) carrying out a program to manage and resolve cases involving institutions insured by the FSLIC for which a receiver or conservator has been appointed within three years following the enactment of this Act; (2) managing the assets of the Federal Asset Disposition Association (FADA); and (3) performing other authorized functions. The functions would be performed in a manner similar to the operation of FDIC.

It establishes the Oversight Board to oversee the RTC, which shall consist of the Secretary of the Treasury, the Chairman of the Federal Reserve Board, the Attorney General, the Secretary of Housing and Urban Development, a private member and, in a nonvoting capacity, the chairman of FDIC.

It authorizes the RTC to borrow funds from the Treasury, on terms fixed by the Secretary of the Treasury, up to an aggregate of $5,000,000,000 outstanding at any one time.

Subtitle B establishes the Resolution Funding Corporation (REFCORP) to carry out certain public borrowing to finance the resolution activities of RTC. If provides for the capitalization of the REFCORP by the purchase of capital stock by Federal Home Loan Banks and specifies the amounts each Federal Home Loan Bank shall invest in the capitalization of the REFCORP. It provides for additional sources of funds for the REFCORP by issuance of bonds

or similar obligations which the REFCORP may issue to $50 billion.

The subtitle provides that the REFCORP shall pay any interest due on such obligations from proceeds received by the RTC from the liquidation of financial institutions under its management. It provides that the proceeds of obligations issued by the RFC shall be invested in capital certificates issued by the RTC, and grants tax-exempt status to any obligations of the REFCORP. The REFCORP would be terminated when all capital certificates purchased by the REFCORP in the RTC have been retired.

Thrift Acquisition Enhancement

Title VI provides certain incentives and relaxation of limitations on acquisition of savings institutions by other thrifts and by other financial institutions.

Home Loan Bank Restructuring

Title VII abolishes the Federal Home Loan Bank Board (FHLBB) and transfers most power and authority vested in the FHLBB to a new Federal Housing Finance Board.

The new Board would exercise those functions of the FHLBB and FSLIC not expressly transferred or consolidated into the FDIC or the RTC.

The title also makes amendments related to the Federal Home Loan Banks, to reflect restructuring otherwise imposed by the bill which will eliminate most regulatory and supervisory functions of the Banks.

Bank Conservation

Title VIII amends the Bank Conservation Act to revise provisions concerning the appointment of the FDIC as the conservator of a bank.

The title specifies that the Comptroller of the Currency shall have the exclusive power and jurisdiction to appoint a conservator for the bank, and revises provisions concerning powers and duties of a conservator and termination of a bank conservatorship.

Revises provisions concerning the liability of a conservator for acts performed pursuant to the conservatorship. Specifies that a conservator may be held liable only for acts which are found to be grossly negligent. Allows the Comptroller to indemnify the conservator.

Regulatory Authority and Criminal Enhancements

Title IX makes change in law regarding enforcement powers, criminal penalties, and related supervision issues.

Subtitle A makes technical amendments to the Federal Deposit Insurance Act with respect to federal banking agency authorities, and provides a number of enhancements in administrative enforcement powers.

Subtitle B revises procedures for termination of FDIC insurance and subtitle C provides improvements in audit and monitoring activities of supervisory agencies.

Subtitle D makes amendments to the Right to Financial Privacy Act to better balance privacy and supervisory concerns.

Subtitles E and F provide new criminal and civil penalties to bribery, embezzlement, accounting, and fraud.

Studies

Title X provides for studies and reports on the Federal deposit insurance system.

Appraisal Reform

Title XI proposes new federal legislation to regulate the real estate appraisal industry. The title is a negotiated agreement between many affected communities, based on legislation previously introduced by Congressman Barnard (H.R. 3675, 100th Congress).

Miscellaneous Provisions

Title XII provides a number of technical and conforming amendments. It seeks to make the credit union structure more comparable to that affecting other financial institutions, and provides for certain studies. The title contains a separability provision.

State Housing Finance Authorities

Title XIII contains provisions relating to sale by RTC of properties to state agencies for expansion of the stock of low and moderate income housing.

DEPARTMENTAL VIEWS

The committee reviewed provisions of the bill, applicable only to the legislative branch, and sought no views.

COMMITTEE VIEWS

The committee has elected to report on the matter without amendment and without recommendation.

The committee clearly accepts that H.R. 1278 is "emergency" legislation, and desires to accommodate the speedest possible enactment of legislation on the subject.

For this reason, the committee has elected to file its report and to work cooperatively with other committees having jurisdiction to resolve policy and jurisdictional concerns within the context of fashioning a rule providing for the consideration of the bill.

COMMITTEE CONSIDERATION

H.R. 1278 was introduced by Chairman Gonzalez (by request), based on Administration proposed legislation on March 6, 1989, and referred to the Committee on Banking, Finance and Urban Affairs.

On March 8, 1989 it was referred to Subcommittee on Financial Institutions Supervision, Regulation and Insurance. The subcommittee held hearings and mark-up in March and April, and reported the measure to full committee with an amendment on April 13, 1989.

Full committee consideration and mark-up was held in late April to early May, and the measure was ordered reported May 2, 1989.

The report was filed May 16, 1989 (H. Rept. 101-54, Part I), and the bill was sequentially referred, for a period ending May 25, 1989,

to the Committee on Ways and Means. On May 18, 1989, the committee considered the bill and ordered it reported with amendments. The committee reported on May 23, 1989 (H. Rept. 101–54, Part II).

The bill also was sequentially referred, for a period ending May 25, 1989 which was extended until June 1, 1989, to the Committee on the Judiciary.

On May 23, 1989, the sequential referral was extended to include the Committee on Government Operations, for consideration of a Ways and Means Committee amendment, and the Committee on Rules, for that matter and a provision of the Banking Committee's substitute.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

Committee Vote

Clause 2(l)(2)(B) of rule XI requires each committee report to accompany any bill or resolution of a public character, ordered to be reported by a recorded vote, to include the total number of votes cast for and against the reporting of the measure.

On June 1, 1989, the committee ordered the measure reported to the House, without amendment and without recommendation, by voice vote, a quorum being present.

Committee Cost Estimate

Clause 7(a) of rule XI requires that certain committee reports contain committee cost estimates.

That provision does not apply to the Committee on Rules. The committee has proposed no changes in the bill and accepts the Congressional Budget Office estimates printed in the appropriate committee reports.

Congressional Budget Office Estimates

Clause 2(l)(3)(B) requires that each committee report contain any statement required by section 308(a) of the Congressional Budget Act of 1974, as amended. The sections under consideration by the Committee do not provide new budget authority, new spending authority under section 401(c)(2), new credit authority, nor change revenue levels, hence, no statement is required under section 308(a) of the Congressional Budget Act of 1974, as amended.

Clause 2(l)(3)(B) requires that each committee report contain any cost estimate and comparison provided by the Congressional Budget Office, if timely submitted, pursuant to section 403 of the Congressional Budget Act of 1974. No such estimate has been received by the Rules Committee. However, the Committee is aware that CBO cost estimates are included in other committee reports. The Committee on Rules proposes no amendments.

Inflation Impact Statement

Clause 2(l)(4) of rule XI requires that each committee report contain a statement relating to the inflationary impact of the enactment of that measure.

The Committee believes that the provisions under consideration would have no significant impact on prices and costs in the national economy.

Oversight Findings

Clause 2(l)(3)(A) of rule XI requires that each committee report contain oversight findings and recommendations required pursuant to clause 2(b)(l) of rule X.

The committee has reviewed the proposed legislation, and expressed views regarding the rules proposed by the amendments, in the section of the report entitled "Background and Summary."

Oversight Findings and Recommendations of the Committee on Government Operations

Clause 2(l)(3)(D) of rule XI requires that each committee report contain any oversight findings and recommendations made by the Committee on Government Operations pursuant to clause 4(c)(2) of rule X.

No such findings and recommendations have been received.

Advisory Committees

Section 5(b) of the Federal Advisory Committees Act (Public Law 92-463), enacted as an exercise of the rulemaking power of the House, requires the report accompanying any bill or joint resolution to contain certain findings of the committee with respect to any advisory committee established by the legislation.

Section 1206 of H.R. 1278 creates an advisory committee. The provision is not within the jurisdiction of the Committee on Rules, and the committee defers, on this matter, to the report to accompany the measure of the Committee on Banking Finance and Urban Affairs (H. Rept. 101-54, Part 1).

Comparative Print

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain a comparative print indicating changes in the existing rules.

Although the bill, as proposed to be amended, would make changes in the rules of the House, it would do so in a bill and in a manner that does not directly amend the Rules of the House of Representatives.

The committee has included a discussion of the rules, in the portion of this report entitled "Background and Summary," which meets the informational needs contemplated by clause 4(d) of rule XI.

Changes in Existing Law Made by the Bill, As Reported

Clause 3 of rule XIII requires the report to accompany a bill or joint resolution which repeals or amends existing law to contain a comparative print showing the changes made by the bill as reported. Matter in compliance with the Ramseyer rule is printed in the reports of the appropriate committees. Since the Committee on Rules proposes no amendments, it has not elected to duplicate those printings.

Views of Committee Members

Clause 2(l)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report.

Although neither requirement applies to the committee, it always makes the maximum effort to provide its members with such an opportunity.

○